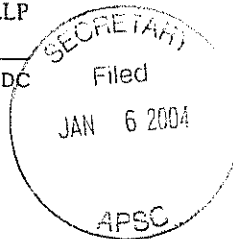




BALCH & BINGHAM LLP

Alabama • Mississippi • Washington, DC

Robin G. Laurie  
(334) 269-3146



January 6, 2004

Attorneys and Counselors  
The Winter Building  
2 Dexter Avenue  
P.O. Box 78 (36101-0078)  
Montgomery, Alabama 36104-3515  
(334) 834-6500  
(334) 269-3115 Fax  
www.balch.com  
(866) 736-3859 (direct fax)  
rlaurie@balch.com

BY HAND DELIVERY

Mr. Walter Thomas  
Secretary  
Alabama Public Service Commission  
RSA Union Building  
8th Floor  
100 N. Union Street  
Montgomery, Alabama 36104



**Re: Proposed Revisions to the Price Regulation and Local Competition Plan -  
Comments of AT&T; Docket No. 28590**

Dear Mr. Thomas:

Enclosed for filing are the original and ten copies of the Comments of AT&T Communications of the South Central States, LLC, in the above-referenced matter.

Very truly yours,

  
Robin G. Laurie

RGL:kp  
Enclosures

**BEFORE THE  
ALABAMA PUBLIC SERVICE COMMISSION**

**In Re: Proposed Revisions to the    )  
Price Regulation and Local            )     Docket No. 28590  
Competition Plan                        )**

**COMMENTS OF AT&T**

On September 22, 2003 the Alabama Public Service Commission ("APSC" or "Commission") issued an Order seeking comments on three separate proposals that would substantially modify the Commission's Report and Order governing Price Regulation and Local Competition.<sup>1</sup> Pursuant to the September 22, 2003 Order, AT&T Communications of the South Central States, LLC ("AT&T") provides the following comments.

**BACKGROUND**

Just prior to the passage of the Telecommunications Act of 1996, the Commission combined four dockets to establish rules governing price regulation for incumbent local exchange companies ("ILECs"), and local exchange competition.<sup>2</sup> The September 20, 1995 Report and Order contained clear and distinct sections that apply to ILECs (sections 1.00 – 17.00), CLECS (section 19.00) and Interexchange carriers ("IXCs") and resellers

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<sup>1</sup> The Commission's current Price Regulation and Local Competition rules were established in a Report and Order dated September 20, 1995 combining the following four dockets: *Petition of South Central Bell Telephone Company to Restructure its Form of Regulation*, Docket No. 24499; *All Telephone Companies Operating in Alabama, Generic Hearing on Local Competition*, Docket No. 24472; *Streamlined Regulation of Interexchange Carrier and Reseller Telecommunications Services*, Docket No. 24030; and *Complaint Filed by AT&T Communications of the South Central States, Inc. Against South Central Bell on April 25, 1995*, Docket No. 24865, hereinafter referred to as the "Price Regulation and Local Competition Order".

<sup>2</sup> These rules were amended by the Commission's Report and Order dated January 7, 1999 in the same combined proceeding to require all telephone companies (including CLECs) to charge rates that are in tariffs filed with the Commission. The notice period for filing CLEC tariffs was made the same as that required of ILECs. Prior to that amendment, CLEC tariffs were filed as information only and did not require Commission approval. (See Price Regulation and Local Competition Order, sec. 19.10).

(section 18.00). By its own terms, the Price Regulation Plan adopted by the Commission was to be subject to periodic review (section 25.06).

During 2001 the Commission Staff sponsored industry meetings to consider potential changes to Price Regulation and Local Competition rules. A workshop was conducted and a draft of proposed new rules was discussed.

On January 30, 2003 a group of thirty (30) ILECs (the "Rural LECs") filed a Petition with the Commission for a new streamlined regulation plan applicable only to ILECs in Alabama.<sup>3</sup> This filing was followed by a BellSouth proposal on July 3, 2003. The BellSouth proposal, denominated the "Metro Pricing Flexibility Plan" ("MPFP"), would apply only to BellSouth intrastate service offerings subject to Commission regulation.<sup>4</sup> The third and final proposal to revise the Commission's Price Regulation and Local Competition Order is the plan proposed by the Commission Staff and attached to the Commission's Order establishing Docket No. 28590 (the "Staff Proposal"). It appears that the intent of the Staff Proposal is to apply to ILECs, CLECs, and IXCs.<sup>5</sup>

### INTRODUCTION

The Rural LECs' proposal is inadequate because it addresses only the concerns of that segment of the industry and does not attempt to speak to the needs of the CLECs or IXCs. BellSouth's proposal is even more extreme in that it is focused on BellSouth services alone and further because it is based on the false premise that there has been a

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<sup>3</sup> See Rural LECs' Petition for Adoption of Streamlined Regulation Plan, Exhibit A, p. 1.

<sup>4</sup> Petition of BellSouth Telecommunications, Inc. for Adoption of Metro Pricing Flexibility Plan, p. 1.

<sup>5</sup> The title of the Staff Proposal is "Streamlined Regulation Plan For Incumbent Local Exchange Carriers ("ILECs") Subject To Local Competition, Interexchange Carriers ("IXCs") And Competitive Local Exchange Carriers ("CLECs"). See Appendix A to the Order establishing Docket No. 28590, September 22, 2003.

substantial change in the competitive landscape in Alabama.<sup>6</sup> Indeed, BellSouth's MPFP proposal assumes a "fully competitive marketplace" that is non-existent in Alabama:

This proposal, detailed in Exhibit 1, contains a framework and the specific conditions for a new method of regulating BellSouth's services that is consistent with a fully competitive telecommunications market.<sup>7</sup>

The fact is that there have not been substantial changes in the competitive landscape for local exchange services in Alabama, much less any changes that would even approach the level of a "fully competitive marketplace". Consequently, BellSouth's proposal should be rejected by the Commission. The Staff Proposal seems to have adopted the format of the Rural LECs' proposal, but appears to have a broader application. However, the Staff Proposal could be clarified and improved (e.g., by having separate sections for ILECs, CLECs and IXC/Resellers). Therefore, AT&T will use the Staff Proposal as the basis for its comments. After discussing generally the status of the competitive marketplace and need for access charge reform, AT&T will suggest specific recommended changes to the Staff Proposal and provide specific rationale for each recommendation. These recommendations will appear in Appendix A to these comments and be in "revision marking" format to the Staff Recommendation.

**I. The Level Of Competition In Alabama  
Does Not Justify Further Significant  
Streamlined Regulation For BellSouth  
And Other ILECs.**

In considering changes to the Price Regulation and Local Competition Order, it is important for the Commission to review the competitive landscape in which BellSouth and the other ILECs operate. Indeed, one of the objectives of the existing Plan is to

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<sup>6</sup> Petition of BellSouth, 7-3-03, p. 3

<sup>7</sup> *Id.*, p. 1

“create an environment in which fair and effective local competition flourishes.”<sup>8</sup>

BellSouth’s Petition claims that competition has substantially changed in the last four years, listing the numbers of CLECs operating in Alabama. However, BellSouth fails to acknowledge what really has allowed the little competition that has developed in Alabama: the Telecommunications Act of 1996 and resulting decisions which made UNE-P available and which provided for TELRIC pricing, and NOT the existing Price Regulation Plan in Alabama.

BellSouth also grossly exaggerates the actual state of competition, as the level of competition is low. The national study recently released by the Consumer Federation of America, *Competition at the Crossroads: Can Public Utility Commissions Save Local Phone Competition?*,<sup>9</sup> includes a nationwide review of the state of local competition. Exhibit 5 to that study (attached hereto as Appendix B) sets forth the details for each state, demonstrating that in Alabama, CLECs have achieved only a 5% share of the local residential market. This low level of competitive penetration places Alabama at number 33 among all the states. As admitted in BellSouth’s Petition, the Commission has already found that CLEC competition has not entered the residential market to the extent expected.<sup>10</sup> BellSouth and the other ILECs command the vast majority of access lines in Alabama and continue to exercise significant market power. As a result, competition is not of a sufficient level to warrant further relaxation in the form proposed by BellSouth and the Rural LECs.

While affirmatively claiming that competitors are flourishing in its Alabama territory, BellSouth fails to point out that it has been able to expand its competitive

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<sup>8</sup> Price Regulation and Local Competition Order, p. 3.

<sup>9</sup> Released October 7, 2003 and located at [www.consumerfed.org/unep\\_200310.pdf](http://www.consumerfed.org/unep_200310.pdf)

<sup>10</sup> BellSouth Petition, p. 2.

offerings, now that it has 271 authority in Alabama and indeed, throughout its region. At the time the Price Regulation and Local Competition Order was adopted in 1995, this was not the case. Now that BellSouth, a formidable competitor, has the authority to provide long distance service, it is even more important that this Commission not relax its regulatory oversight regarding the provision of local exchange services by BellSouth. BellSouth has made rapid and impressive inroads into its new markets, at a pace and rate CLECs cannot match with the more difficult obstacles of local market entry. In a press release dated December 30, 2003, BellSouth announced that it had 3.4 million long distance customers in its region, capturing nearly 25 percent of its residential customers and approximately 34 percent of its medium-size business customers. Thus, in just over one year, BellSouth has been able to seize long distance market share much more quickly than any CLEC in Alabama can hope to accomplish in a similar period.

A final point is the irony of BellSouth claiming on the one hand that competition has “flourished” under the Price Regulation Plan while on the other hand, it has vigorously opposed UNE-P based competition. UNE-P, not the Price Regulation Plan, has allowed CLECs to offer local service to mass market (residential and small business) customers, in addition to large business customers. Knowing this, BellSouth has relentlessly fought to eliminate UNE-P, the only feasible entry vehicle for CLECs to serve mass market customers. This was BellSouth’s position in the FCC’s Triennial Review case, and even after the FCC’s August 21, 2003 Order in that case, BellSouth took the unusual step of appealing in federal court for a writ of mandamus to, *inter alia*, “...direct the [FCC] to put a halt to new UNE-P customers and adopt a plan to end

existing UNE-P arrangements”.<sup>11</sup> In addition, BellSouth has recently filed written testimony in Florida and Georgia urging those commissions to eliminate local switching as a designated unbundled network element. This Commission has opened Docket No. 29054, *In the Matter of The FCC's Triennial Review Order (Phase II – Local Switching for Mass Market Customers)*, where BellSouth will undoubtedly continue its efforts to stop the only method of mass market entry that is feasible for CLECs. The state of local competition in Alabama is fragile, making it all the more important that the Commission's current review of the Price Regulation rules take account of that environment.

## **II. Intrastate Access Charges Should Be Reduced To Cost Based Levels.**

The Commission's review of the Price Regulation and Local Competition rules presents a timely opportunity to review the level of the intrastate access component of the Plan. As noted earlier, an objective of price regulation and local competition is to “create an environment in which fair and effective local competition flourishes.” Given the ILECs' unique role as the dominant providers of access services, the Price Regulation and Local Competition rules governing access services, unless revised, can indeed hinder competition in the market for long distance services.

This proceeding is therefore the logical opportunity for the Commission to explore access reform in light of the changed market. One way to accomplish access reform is to require the ILECs to determine their rates for intrastate access services using cost principles applicable to UNE services offered by BellSouth. The Commission

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<sup>11</sup> *Petition for a Writ of Mandamus to Enforce the Mandate of this Court, United States Telecom Association, et al. v. Federal Communications Commission and United States of America* (U.S. Ct. App., D.C. Cir.), filed August 28, 2003 at p. 5

should direct BellSouth and the other ILECs to re-price intrastate switched access services using the same forward looking standards applicable to UNE services.

Switched access services are functionally equivalent to local interconnection services and they should be priced the same. Many of the same facilities that are used for switched access are also used for terminating local traffic – e.g., the local switch – and the costs to switch local and toll traffic are indistinguishable. Therefore, the prices charged for both activities should be based on the same standards.

In Docket No. 27821 the Commission established cost-based rates for the unbundled network elements (UNEs) associated with local interconnection at \$.0026.<sup>12</sup> By contrast, the average rate for two ends of switched access for all independent companies in Alabama is in excess of \$.07 per minute of use – an amount that is almost 2,600% above the equivalent cost-based rate. AT&T recommends that the Commission take immediate steps to begin lowering intrastate switched access rates of all ILECs in Alabama to cost based levels that are at least equivalent to the level of the ILECs' local interconnection rates.

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<sup>12</sup> The figure of \$.0026 is the UNE cost comparable to two ends of switched access and is based on BellSouth data in Docket No. 27821. See *In Re Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements*, Order May 31, 2002. UNE cost data is not available for the other ILECs. However, even if one assumes that other ILECs' UNE costs are twice that of BellSouth, there is still a huge disparity between cost and current prices for switched access services.

CONCLUSION

Based on the foregoing reasons, AT&T requests the Commission to adopt the changes to the Staff's Proposal attached hereto as Appendix A.

Respectfully submitted this 6<sup>th</sup> day of January 2004.

A handwritten signature in black ink, appearing to read 'Robin Laurie', is written over a horizontal line.

Robin Laurie, Esq.  
Balch and Bingham L.L.P.  
2 Dexter Avenue  
Montgomery, AL 36104  
Telephone: (334) 834-6500

Attorney for AT&T  
Communications of the South  
Central States, LLC

OF COUNSEL:  
Balch & Bingham LLP  
P. O. Box 78  
Montgomery, Alabama 36101  
(334) 834-6500

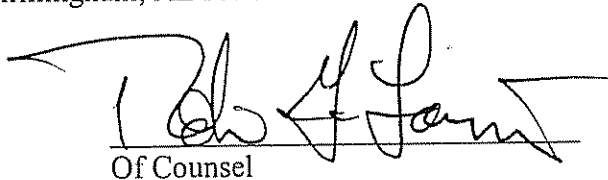
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following individuals in this cause by placing the same in the U.S. Mail, postage prepaid and properly addressed this 6<sup>th</sup> day of January, 2004.

Frank Semmes, Esq  
General Counsel – Alabama  
BellSouth Telecommunications, Inc.  
3196 Highway 280 South, Room 304N  
Birmingham, Alabama 35243

Mark D. Wilkerson, Esq.  
Brantley, Wilkerson & Bryan P.C.  
405 S. Hull Street  
P. O. Box 830  
Montgomery, Alabama 36101-0830

Edgar C. Gentle, Esq  
Gentle, Pickens & Eliason  
1928 First Avenue North, Ste. 1500  
Birmingham, AL 35203

  
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Of Counsel

# EXHIBIT A

## APPENDIX A

### STREAMLINED REGULATION PLAN FOR INCUMBENT LOCAL EXCHANGE CARRIERS ("ILECs") SUBJECT TO LOCAL COMPETITION, INTEREXCHANGE CARRIERS ("IXCs") AND COMPETITIVE LOCAL EXCHANGE CARRIER ("CLECs")

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Comment – Although the title of the document indicates these streamlined regulation rules apply to CLECs and IXCs, there are only sporadic references to CLECs in the ILEC section of the rules and no mention whatsoever of IXCs. To avoid confusion as to which rules apply to ILECs verses the other companies, there should be separate “Parts” for each.

#### PART 1.00 ILECS

##### 1. Applicability

A. The Streamlined Regulation Plan for ILECs subject to local competition (hereinafter referred to as “the ILEC Plan”) will apply to all services offered by ILECs which are regulated by the Alabama Public Service Commission hereinafter referred to as “the Commission”) The suspension of requirements contained in the Telecommunications Act of 1996<sup>2</sup> previously granted by the Commission on October 8, 1996 and subsequently extended till June 2001 has expired<sup>3</sup>

B. All ILECs electing to be regulated under the ILEC Plan certify the following:

1. They will provide non-discriminatory interconnection to CLECs
2. They will make provision for reasonable non-discriminatory collocation by CLECs
3. They will file an affirmative response of their election to participate in the ILEC Plan with the Commission within sixty (60) days of the effective date of this Order

C. All ILECs who do not choose to be regulated under this plan will be regulated under rate base, rate of return methodology.

<sup>1</sup> See definition at Part 1.02(F)

<sup>2</sup> The Communications Act of 1934 as amended by The Telecommunications Act of 1996; Pub. L. No. 104-104, 110 Stat. 56 codified at 47 USC § 151 et seq., (hereinafter the “Telecom Act”)

<sup>3</sup> On October 8, 1996, the Commission granted the Rural LECs a limited suspension of all of the requirements of Subsection 251(b) and (c) of the Telecom Act, to the extent necessary to implement the provisions of the September 20, 1995 Order. The suspension was later amended to extend through June of 2001

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2. Definitions and Terms

- A. "Access Services" include Switched Access Services and Local Access Services and are defined as follows:

"Switched Access Services" allow toll providers to interconnect to a local exchange company's network in order to originate or terminate interexchange calls and the associated Signal System Seven ("SS7") signaling used to complete these calls

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"Special Access Services" allow toll providers to interconnect to a local exchange company's network via dedicated circuits in order to originate or terminate interexchange calls.

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Comment – Access services may be provided by any local exchange company, not just the ILECs.

3. "Local Access Services" allow CLECs and ILECs to complete local telecommunication services through the interconnection of their networks.

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Comment – Local Access Services allow CLECs and ILECs to connect to each others networks, not just to the ILEC network.

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to an ILEC's network, through resale by a CLEC of an ILEC's regulated retail services, or through the purchase of unbundled network elements ("UNEs") and the associated SS7 signaling associated with these calls.¶

- B. The "Anniversary Date" is the effective date shown on the Commission Order implementing the terms and conditions contained herein.

- C. "Basic Services" consist of existing traditional flat-rate basic local exchange services for residence and business customers, including Lifeline Service and non-recurring service order charges for the initial service.

- D. "Effective Date" is the date on which a new tariff, tariff revision, or promotion is considered valid and effective. The Effective Date is based on a specified number of working/calendar days following, but excluding, the File Date.

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- E "File date" is the official date recorded by the office of the Director of the Commission's Administrative Division (Commission Secretary) for any proposed tariff, tariff revision, or promotion submitted by a telecommunications provider an accepted by the Commission. The File Date is considered administrative in nature.

- F. "ILECs subject to local competition" are those incumbent local exchange companies who have requested and are approved by the Commission to be regulated in accordance with the provisions of the plan contained herein, and have agreed to submit to the Commission for such review or approval as may be required by the Commission, prices for unbundled network elements (UNEs), a proposed resale discount rate, and an

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available proposed interconnection agreement no later than eighteen (18) months from the effective date of this Order.

G. "Non-Basic Services" are all other services, which are not categorized as Basic or Access Services to include non-recurring charges for all services. A new regulated service, function, feature, capability, or any combination thereof, which is not offered by an ILEC as of the effective date of the ILEC Plan, shall be presumptively classified as a Non-Basic Service unless the Commission determines otherwise.

H. The "Service Price Index" ("SPI") is a cumulative measure of price changes. The SPI Report is used to track the aggregate change in revenue to a Non-Basic Services subcategory and to determine whether price increases for individual service in the Non-Basic Category are authorized in accordance with the constraints set forth in this plan for Non-Basic Services pricing.

I. "Working Days" shall mean Monday through Friday, excluding official holidays recognized by the State of Alabama. "Working Days" shall also exclude the day before and the day after Independence Day, New Years Day, Christmas Day, and Thanksgiving Day to the extent that such days fall between Monday and Friday and to the extent that such days are authorized by the Governor as official holidays for Alabama State Employees.

### 3. Service Categories

Each telecommunications service offered by an ILEC and regulated by the Commission will be classified into one of the following three service categories: Basic, Non-Basic, or Access. The Commission shall make the final determination regarding the classification or reclassification of a particular service.

### 4. Tariffs, Promotions, and Contract Service Arrangements ("CSAs")

#### A. Tariffs

1. An ILEC shall file tariffs for all telecommunications services offered by the ILEC, and regulated by the Commission. Tariffs shall be filed for any proposed change to the terms and/or conditions or prices of the telecommunications services offered by ILECs regulated by the Commission.

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2. Terms and Conditions

Changes to terms or conditions for an ILEC's Basic, Non-Basic, and Switched Access Services shall be filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.

Comment – The Basic, Non-Basic and Access service categories are vestiges of the ILEC Price Regulation rules that do not apply to CLECs. To avoid confusion, CLECs should be addressed separately in a new “Part 2.00” of these rules. Part I is the ILEC section and should contain references to ILECs only.

3. Price Reductions

Price reductions for telecommunications services offered by an ILEC and regulated by the Commission shall be filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.

4. Price Increases

(a) Price increases for ILEC Basic Services shall be filed with a proposed Effective Date no earlier than thirty (30) calendar days following the File Date.

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(b) Price increases for ILEC Non-Basic Services shall be filed with a proposed Effective Date no earlier than ten (10) working days following the File Date.

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(c) Price increases for Switched Access Services shall be filed with a proposed Effective Date no earlier than thirty (30) calendar days following the File Date.

ILECs may petition the Commission to increase/rebalance their initial basic non-reclining charge on a case by case basis with appropriate justification.<sup>4</sup>

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<sup>4</sup> "Rebalancing" in this application entails an adjustment to the initial basic non-recurring charges assessed by non-BellSouth ILECs to offset revenue reductions from the decreased access charges such non-BellSouth ILECs assess

5. New Services

Tariffs for new telecommunications services shall be filed with a proposed Effective Date no earlier than thirty (30) calendar days following the File Date.

6. Grandfathering/Obsoleting and Eliminating Services

(a) Tariffs that grandfather/obsolete telecommunications services shall be filed with a proposed effective date no earlier than ten (10) working days following the file date

(b) Tariffs that eliminate telecommunications services shall be filed with a proposed effective date no earlier than thirty (30) calendar days following the file date.

7. Promotions

(a) ILECS may offer promotions of existing and/or new products or services upon five (5) working days written notice to the Commission.

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(b) Subject to the availability of products, services, and facilities, promotions will be available on a nondiscriminatory basis to all subscribers meeting the eligibility criteria for each promotion within the classification of service and area for which the promotion is available. Each subscriber meeting the eligibility criteria will have an equal opportunity for participation.

(c) The written notification of promotions which must be submitted to the Commission must specify the time period during which the promotion will be conducted, as well as the terms and conditions of the promotion to include resale provisions.

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*5 Rules on promotions contained herein are subordinate to any subsequent rule adopted by the Commission (Re. BellSouth's Full/ Circle Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions: BellSouth Key Customer Promotion Docket Nos. 15957, 27989, and 28126)*

B. Contract Service Arrangements (CSAs)

Customer-specific contract service arrangements ("CSAs") may be offered by an ILEC to customers for any product or service provided by an ILEC and regulated by the Commission, provided there is a competitive alternative for

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the customer. If no competitive alternative exists CSAs may be offered on a case-by-case basis, subject to Commission approval and the tariff filing requirements for "Changes to Terms and Conditions" in the appropriate service category (i.e. Basic, Non Basic, or Switched Access Services, section 4(A)(2).

- (a) Rates, terms and conditions, and additional regulations, if applicable, for the CSA will be developed on an individual case basis and will include all relevant costs, plus an appropriate level of contribution. Unless otherwise specified, regulations applicable to a CSA are in addition to the applicable rates and regulations specified in an ILEC's tariff.

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- (b) After acceptance of the CSA by the customer, the ILEC will furnish a copy of the accepted proposal and appropriate support documentation to the Commission's Telecommunications Division at least ten (10) working days prior to implementation.<sup>6</sup> The support documentation required will include at a minimum:

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- (i) The total CSA specific revenue;
- (ii) The total CSA cost.
- (iii) The contribution calculation for the CSA
- (iv) The percentage of discount offered by the CSA per service.

The known competitors providing the services offered in the CSA.

The known services being offered to the customer by the competitor(s).

The known rates of the services offered by the competitor(s).

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<sup>6</sup> The Commission reserves the right to review the CSAs to determine the appropriateness of same

#### C. ILEC Tariffs Disposition (Summary)

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Tariff Filing	Minimum Proposed Effective Date
Changes to Terms and Conditions (Basic Services)	10 working days
Changes to Terms and Conditions (Non Basic Services)	10 working days
Changes to Terms and Conditions (Switched Access Services)	10 working days
Price Reductions to all services (Basic, Non Basic Access Services)	10 working days
Price Increases (Basic Services)	30 calendar days
Price Increases (Non Basic Services)	10 working days
Price Increases (Switched Access Services)	10 working days
New Services (Basic, Non Basic, Access Services)	30 calendar days
Grandfather/Obsolete Services	10 working days
Promotions	5 working days
Contract Service Arrangements	10 working days
Eliminate Services (Basic, Non Basic, Access Services)	30 calendar days

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D. The Commission will in good faith strive to ensure that all potential concerns with individual tariffs are resolved within the intervals set forth above. However, in the event that the Commission, in its discretion, determines that suspension of a particular tariff is necessary due to third party intervention or otherwise, the Commission reserves the right to suspend such tariffs pursuant to the requirements of Code of Alabama, 1975 §37-1-81.

#### 5. Pricing Rules For ILECs

Comment – This addition is for purposes of clarity.

##### A. General

1. Existing prices are assumed valid and compliant upon the effective date of this Order.

2. For new services, or in the event of a Price reduction for existing services (excluding IFR Service), the price shall equal or exceed the ILEC's Total Service Long-Run Incremental Cost ("TSLRIC") for the service or the equivalent UNE composite rate, whichever is higher.

3. Prices for non- BellSouth ILECs which have not yet developed UNE prices, or which subsequently adopt BellSouth UNE prices shall be considered compliant if at or above prices for comparable services for BellSouth.

Comment – If a CLEC is more efficient than an ILEC (i.e., its TSLRIC is lower than the ILEC's TSLRIC for a given service) and therefore able to price its services below the TSLRIC of the ILEC, there are no circumstances under which the ILEC should be permitted to price its services below costs. This is the force of the competitive marketplace which compels the ILEC to become more efficient. A rule that allows the ILEC to price below its cost in order to win over the customer destroys the incentive to become more efficient and distorts the competitive process. This provision should be eliminated.

**Deleted:** 4. On a case-by-case basis, an individual service may, with Commission approval,<sup>7</sup> be priced below TSLRIC based on public interest concerns. In addition, an ILEC<sup>8</sup> may, upon Commission approval, price a service below TSLRIC and/or UNE<sup>9</sup> prices in order to meet the equally low price of competitor. Such services shall<sup>10</sup> be available for resale at the applicable discount approved by the Commission. In<sup>11</sup> no event shall revenue shortfalls from such below-cost pricing be recouped from<sup>12</sup> any universal service funding available at the state or federal level.<sup>13</sup>

#### B Basic Services Category Pricing Rules

1. Basic Service rate increases are limited to 3% on an annual basis.

2. An ILEC's payments from the Transition Service Fund "TSF")<sup>7</sup> will be decreased by an amount equal to twenty-five (25) percent of the annualized

<sup>7</sup> The TSF is a fund which was created by the Commission's September 20, 1995 Local Competition Order at §4.09. Its primary purpose is to minimize the impact of lost access charge revenues to the non-BellSouth/CenturyTel ILECs.

revenue change associated with any IFR price increases implemented by such ILEC under this plan, and twenty-five (25) percent of the annualized revenue change associated with any IFB price increases, calculated as of the effective date of the rate increases. The TSF will be adjusted accordingly.

3. With each tariff filing for basic service rate increases, an ILEC shall file with the Commission Staff a schedule delineating each service's current units annualized, present rate, proposed rate, amount and percentage of the increase or decrease. An example of such filing is contained in Appendix B.

#### C Non-Basic Services Pricing Rules

1. Non-Basic services are classified as follows:

(a) Non-Basic Group I -residential Non-Basic services excluding call waiting, call forwarding, and caller ID

(b) Non-Basic Group II -business Non-Basic services excluding call waiting, call forwarding and caller ID.

(c) Non-Basic Group III -business and residential call waiting, call forwarding and caller ID

2. The aggregate net revenue increases the Non-Basic Groups as follows

(a) For Non-Basic (Group I) services from anniversary date to anniversary date is limited to five (5) percent.

(b) The aggregate net revenue increase for Non-Basic (Group II) services from anniversary date to anniversary date is limited to ten (10) percent.

(c) Non-Basic (Group III) rates shall be capped for three years at each individual ILEC's rates, and then placed in the appropriate Group I or II subcategory

(d) Both Non-Basic Groups I and II are subject to the individual service limitations set forth below.

(e) Price increases for individual services within both the Group I and Group II subcategories from anniversary date to anniversary date will be limited based upon the price of the service in effect on the anniversary date for the current calendar year

(i) For Group I services priced at \$3 and are over, annual price increases are limited to 7.5 percent. For Group I services priced below \$3, annual price increases are limited to 15 percent.

(ii) For Group II services priced at \$3 and above, annual price increases are limited to 10 percent. For Group II services priced below \$3, annual price increases are limited to 20 percent.

3. Price Increases in either Group I or II that are offset by corresponding price decreases within the same Group are authorized with only the net revenue increase being applied to the annual limitation on the aggregate net revenue increase limitation for the Group. Qualifying offset changes under this provision must be filed with the Commission on the same date and are subject to the limitations on annual price changes for individual services. Further, the Service Price Index (SPI) for those services whose prices are increased or decreased under

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this provision will be adjusted accordingly and the full price change for those services whose prices are increased will be recognized for purposes of compliance with the limitations on annual price increases for individual services within the Group

#### 4. Supporting Documentation Required for Non-Basic Group I and Group II price Increases.

(a) By each year's anniversary date and with each tariff filing an ILEC shall file a SPI report with the Commission Staff, delineating all services within the non basic basket separating Groups I and II. The filing should include units, present rate, proposed rate, amount and percentage of the increase or decrease using the anniversary date units. The units within the anniversary date filing will remain constant until the following year. An example of such filings are contained in Appendices C and D.

(b) Demand for recurring elements is established by multiplying the latest available month's quantities by 12. Demand for non-recurring elements is established by using the latest available 12 month quantities.

(c) New services are included in the SPI report provided the latest available 12 month's quantities include at least six months of demand quantities for the service, whereupon the demand for recurring elements is established by multiplying the latest available month's quantities by 12 and demand for non recurring elements is established by annualizing the latest available 6 month's quantities.

#### Non-Basic Service Price Changes (Summary)

Subcategory	Authorized Annual Net Increase (Aggregate)	Authorized Annual Increase (Individual Services)
GROUP I (Res)	5%	
\$3 and above		7.5%
Less than \$3		15%
GROUP II (Bus)	10%	
\$3 and Above		10%
Less than \$3		20%
GROUP III <sup>8</sup>	Capped for 3 years from effective date of Order	

6. ILECs may petition the Commission to reclassify services between subcategories, but the final determination regarding the classification or reclassification of a particular service shall rest with the Commission.

## D Access Service Category Pricing Rules

1. ILECs shall establish prices for intrastate switched access services that are no higher than their current local interconnection rates. In addition, special access rates shall be established based on equivalent UNE costs. Beginning on the effective date of these rules, the ILECs shall reduce by one-third the difference between current switched access rates and current interconnections rates. On the first and second anniversaries of the effective date of these rules the ILECs will again reduce that difference by one-third so that by the end of two years intrastate switched access rates are equal to local interconnection rates. Special access rates shall be similarly reduced to reflect their equivalent UNE costs.

Comment – Switched access services are the functional equivalent of local interconnection and they should be priced the same. The change recommended above provides a reasonable transition to equity.

2. The terms and prices for UNEs, local interconnection and resale will be formally reviewed and appropriately adjusted as determined by the Commission and in accordance with the Telecom Act.

**Deleted:** ILECs may establish prices, terms and conditions for all services within the Switched Access Services Category. The combination of the traffic sensitive per minute changes for originating and terminating switched access services for all ILECs will be capped at the effective interstate level approved for the ILEC by the Federal Communications Commission. SS7 charges shall be included under the cap.

*8 Both Residential and Business caller ID, call waiting, call forwarding*

## E Effects of Extraordinary Governmental Actions

The financial impact of governmental mandates, both state and federal, that apply specifically and/or disproportionately to, and have a major negative impact on telecommunications companies, may be recovered through an adjustment to prices for Basic, Switched Access and Non-Basic Services. In such an event, the ILEC shall notify the Commission of its intent to adjust prices. Such notice shall provide schedules and appropriate tariffs for the adjusted prices and their Effective Date. Said schedules and tariffs shall be subject to the approval of the Commission.

A "major" impact is an amount (intrastate only) exceeding two (2) percent of the ILEC's total intrastate regulated revenues booked in the preceding calendar year. In order for pricing adjustments to occur under this provision, the ILEC must demonstrate to the Commission's satisfaction the effect of the "major" impact. Further, the Commission may initiate a proceeding on its own motion to further investigate allegations of a "major" impact.

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6 Miscellaneous ILEC Price Regulation Provisions

A. Service

Where capital for supporting the construction of facilities required to provide basic local exchange telecommunications service to a primary dwelling is less than \$10,000 per applicant, the ILEC shall fund construction of the facilities pursuant to the following guidelines: (1) ILECs with 50,000 or more access lines, \$10,000 per applicant; (2) ILECs with less than 50,000 access lines, \$5,000 per applicant. Any amount in excess of the required ILEC funding requirement per applicant shall be the responsibility of the customer(s) making application for service. Any amount(s) due from the applicant(s) must be received by the serving telephone company prior to the company beginning construction. Such amount(s) does, not include any tariffed charges for initiating (non-recurring charges) and providing (recurring charges) service.

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(a) "Primary Dwelling" is a customer's permanent residence, with such residence being equipped with permanent electrical, water, and/or waste facilities. Such term does not include a secondary residence, such as a vacation home; nor does it include other recreational type properties, such as hunting and fishing cabins, camps or lodges. In addition, such term does not include rental property and mobile structures, such as recreational vehicles without permanent electrical, water, and/or waste facilities.

(b) "Applicant" is a potential customer who has made a formal application for service with the prospective serving telephone company. A limitation of one Applicant per Primary Dwelling will be used for purposes of ILEC compliance with Section 6(A)(1) I

2 Broadband Deployment

(a) The Alabama Public Service Commission's goal is that broadband (DSL or greater transmission rate) service be available to 90% of Alabama residential telecommunications subscribers by no later than 01/01/08; with sixty (60%) percent of BellSouth residential subscribers having access to broadband service by 01/01/05 and forty (40%) percent of non-BellSouth subscribers having access to broadband service by 01/01/05.

(b) By March 31 of each year following the effective date of this Order, ILECs will submit to the Commission's Telecommunications Division a status report that shows, by exchange, the percentage of residential subscribers having access to broadband service.

B Service Quality

1) The ILECs will conform to the service standards included in the Commission's Telephone Rules (or as subsequently modified) and any service performance requirements<sup>9</sup> in effect on the date of the Commission Order approving this plan, or which are subsequently adopted by the Commission and made applicable to resale offerings and/or interconnection arrangements.

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(2) The Commission may initiate an investigation and subsequent proceeding<sup>10</sup> to address the failure of any ILEC to comply with the Commission's service standards and/or service performance requirements. Remedies may include suspension of any of the pricing provisions contained herein until the Commission deems that the ILEC/CLEC in question is in compliance with Commission established service standards and/or service performance requirements.

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The Commission may require the submission of reports and data, as it deems necessary, to monitor service standards and service performance<sup>11</sup>

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*9 Service performance standards in addition to those set forth in the Commission's Telephone Rules shall be established in subsequent proceedings*

*10 Proceedings are initiated at the discretion of the Commission and are not required as a result of a complaint*

*11 Included are specific service tests requested by the Commission and any data collected by the ILEC from its own service tests/measurements*

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#### D. Regrouping of Exchanges

Nothing in the ILEC Plan shall be construed to prohibit the regrouping of exchanges due to growth in access lines.

#### E. Customer Notification

The ILEC shall give reasonable notice of any proposed price increase to its customers in accordance with good business practices or as required by the Commission in its discretion.

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#### F. Reporting Requirement

The ILEC shall file an annual Alabama balance sheet and income statement with the Commission. ILECs shall continue to file the annual Form. The Commission may require other financial reports it deems necessary for the regulation of prices in accordance with the ILEC Plan.

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## PART 2.00 CLECs

### REQUIREMENTS FOR NEW ENTRANTS

1. All new local service providers must apply for and receive a certificate from the Commission prior to providing any local exchange services.
2. To create an environment in which fair and effective local competition flourishes, regulatory requirements for new entrants will initially be kept to a minimum in order to prevent unnecessary barriers to effective competition. Nevertheless, the Commission believes that certain requirements are necessary to safeguard the public interests.
3. New entrants must demonstrate that they possess the technical, managerial, and financial resources to provide local exchange service before the Commission considers the issuance of a certificate.
4. New entrants must provide access to and interconnection with their facilities at just and reasonable rates.
5. New entrants must comply with all Commission service quality standards applicable to CLECs and shall submit any service quality reports and allow any access to facilities required by the Commission.
6. New entrants must provide access to: emergency services, the Relay Center for the Hearing Impaired, and operator/directory assistance services.
7. New entrants must, during normal business hours (at a minimum), provide knowledgeable personnel to respond to customer service and billing inquiries.
8. New entrants must, at a reasonable cost, provide customers with a local exchange telephone directory.
9. New local service providers shall file tariffs for local exchange and exchange access services. All tariffs, including but not limited to increases, decreases, new services, terms and conditions, and promotions, will be presumed to be valid and shall be effective one (1) day after filing.

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Comment: -- CLECs do not have any market power in Alabama. As a group, CLECs have only been able to capture 5% of the residential market in Alabama. (See opening comments, page 4, *supra*.) In the absence of market power, CLECs cannot abuse their market position, either as a group or individually. Therefore, there is no reason to delay the effective dates of CLEC tariffs.

10. New local service providers may offer service and market trials prior to filing local service tariffs.

11. Additionally, on or before April 1 of each year, new entrants shall file with the APSC a copy of their Annual Report to Shareholders and the Form 10-K filed with the Securities Exchange Commission. Companies not preparing these reports shall file financial statements containing comparable information.

12. Further, the Commission reserves the right to modify and expand the regulatory requirements for new entrants.

### **PART 3.00 IXC AND RESELLER STREAMLINED REGULATION PLAN**

1. All interexchange carriers and resellers shall continue to file tariff revisions with the Commission. All tariff filings are presumptively valid and shall be effective one (1) day after filing.

2. All interexchange carriers and resellers may offer service and market trials prior to filing new service introductions.

3. Interexchange carrier and reseller rates charged for all services shall continue to be compensatory (i.e., each service must recover total access charges plus billing and collection costs on that service).

4. All interexchange carrier and reseller services shall be available for sale. This should not include billing and collection services on behalf of 3<sup>rd</sup> parties.

5. No interexchange carrier or reseller shall be relieved of its obligation to pay for access services used.

6. No interexchange carrier or reseller shall be relieved of its obligation to comply with any legislative mandate implemented by the Commission regarding revisions to toll rates and services.

7. There shall be no modification to any interexchange carrier's or reseller's certificate of authority without prior approval of the Commission.

### **PART 4.00 Commission Oversight**

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#### **1. Customer Complaint Resolution --**

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The Commission's existing customer complaint procedures remain in full force and effect.

2. Commission Authority –

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Nothing in this plan shall be construed as an abrogation of the Commission's statutory authority or the ongoing statutory obligation of ILECs/CLE s to provide financial cost or other related data as required by the Commission. The Commission specifically retains the authority to extend, modify or repeal all or a portion of this order, and reserves the right to take such steps as are deemed necessary to ensure compliance with the requirements and objectives of this Order.

3. Commission Review –

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This Plan shall supercede the Commission's Report and Order dated September 20, 1995 and all amendments thereto and shall remain effective unless and until there is a determination to the contrary by the Commission. The Commission will conduct Triennial assessments of the Plan beginning with the second anniversary date of the Plan. Said assessment will be conducted through the solicitation of comments from all interested parties including the office of the Attorney General of Alabama. Each such Triennial assessment must be completed within six (6) months of the applicable anniversary date.

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## APPENDIX A

### Rural Calling Plans

A. This service is applicable to all non-BellSouth ILECs as specified herein.<sup>12</sup>

B. Such ILECs will, within 120 days from the date of the Commission Order, approving this plan, implement the Rural Calling Plans (RCPs). The RCPs are described in greater detail below.

#### 2. New Residential Rural Calling Plans ("RCP") 2

Option #1      Recurring charge of up to \$17.30 plus up to \$.10/min for Rural Calling Plan<sup>13</sup> calls.

Option #2      Recurring charge of up to \$20.00, plus up to \$.07/min for Rural Calling Plan calls.

Option #3      Recurring charge of up to \$39.95 for up to 1000 Rural Calling Plan minutes month and up to \$.07/min for additional minutes.<sup>14</sup>

NOTE:          Recurring charge is in lieu of monthly recurring charge for flat-rate basic local service.<sup>15</sup>

3      Target Implementation Date: Within one hundred twenty days after Commission Approval. Existing ACS plans may be grandfathered with approval by the Commission or maintained at election of Rural LEC, with customers advised of the availability of the new plans.

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12 This Appendix A does not apply to Valley Telephone Company, Interstate Telephone Company, Frontier Communications of Lamar County, Inc. and GTC, Inc. d/b/a GT Com. which are associated with LA TAs in neighboring states.

13 Includes IntraLATA calling.

14 In lieu of Option 2 and 3, individual ILECs may offer plans providing for a larger calling scope and reduced minutes.

15 Individual ILECs may choose to alternatively identify charge as an additive to basic service rate.

4.      Other Provisions: Upon successful demonstration by a Rural LEC to the Commission of revenue losses resulting from imposition of the new plan, if any, within the first twelve-month period of the plan, the Commission shall grant relief as follows:

- 1) Increased per minute of use charges,
- 2) Increased monthly recurring charges,
- 3) Implement compensating rate adjustments for other services

A formula for determining revenue loss shall be reduced to a spreadsheet developed in cooperation with the APSC staff and determined prior to beginning of trial period.

The Commission will within one year open proceeding for county wide calling

# EXHIBIT B

**EXHIBIT 5: COMPETITION IN THE LOCAL TELEPHONE MARKET**

STATE	INTENSITY		EXTENSIVENESS				BALANCE	
	CLEC RES		NO CLECS		6 OR CLECS		RES RATIO	
	MKT SHARE		IN ZIP CODE		IN ZIP CODE		CLEC%/ILEC%	
	%	RANK	%	RANK	%	RANK	RATIO	RANK
New York	23.6	1	5.0	7	52.6	2	0.93	7
Rhode Island	21.2	2	2.8	5	0.0	34	0.97	6
Michigan	20.6	3	8.8	10	39.6	8	0.99	5
Illinois	19.2	4	32.6	27	22.8	13	1.04	2
Nebraska	16.7	5	66.9	38	0.0	38	0.93	8
Kansas	14.6	6	58.6	36	0.9	33	0.82	12
Iowa	14.3	7	36.3	30	0.0	35	1.10	1
Massachusetts	13.4	8	1.0	1	41.5	6	0.77	13
Colorado	13.3	9	26.4	20	19.2	20	0.84	9
Utah	13.1	10	32.3	26	10.9	25	0.83	10
Virginia	13.0	11	21.9	17	21.7	15	1.00	4
District of Columbia	12.6	12	11.1	12	44.4	4	0.76	14
Texas	12.4	13	17.9	15	47.3	3	0.70	23
Georgia	11.6	14	23.5	19	41.5	7	0.74	16
New Hampshire	11.4	15	3.2	6	1.4	32	0.74	17
Minnesota	11.1	16	33.7	28	8.8	26	0.59	32
Pennsylvania	10.7	17	19.5	16	28.9	11	0.61	30
Wisconsin	10.0	18	35.5	29	3.5	29	0.72	20
Arizona	8.9	19	27.5	22	28.9	12	0.71	22
New Jersey	8.6	20	1.5	3	41.7	5	0.83	11
California	8.3	21	10.1	11	37.3	9	0.72	21
Florida	7.7	22	6.7	8	60.9	1	0.58	33
Oklahoma	6.9	23	56.9	35	8.3	28	0.61	31
Arkansas	6.9	24	61.1	37	0.0	37	0.64	28
Ohio	6.9	25	30.0	25	19.3	18	0.73	18
Missouri	6.8	26	48.8	34	11.0	24	0.67	25
Washington	6.2	27	29.8	24	21.8	14	0.58	34
Oregon	5.9	28	17.4	13	2.1	30	0.67	26
Louisiana	5.7	29	26.8	21	20.9	17	0.75	15
Maryland	5.6	30	1.6	4	31.7	10	0.73	19
Mississippi	5.6	31	8.0	9	1.6	31	1.01	3
Indiana	5.4	32	39.8	32	0.0	36	0.70	24
Alabama	5.0	33	36.9	31	8.4	27	0.63	29
Connecticut	4.9	34	1.1	2	21.0	16	0.49	35
Nevada	3.7	35	22.4	18	11.2	23	0.32	37
South Carolina	3.2	36	29.0	23	17.5	21	0.45	36
Tennessee	3.1	37	42.2	33	16.3	22	0.31	38
Kentucky	2.9	38	79.1	39	0.0	39	0.67	27
North Carolina	2.2	39	17.7	14	19.2	19	0.27	39
US TOTAL	10.2	NA	31.0	NA	21.0	NA	0.74	NA

SOURCE: Industry Analysis Division, *Local Telephone Competition: Status as of December 31, 2002*  
(Federal Communications Commission, June 2003)